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In the Supreme Court of the United States

OCTOBER TERM, 1953

No. 398

CAPITAL SERVICE, INC., DOING BUSINESS AS DANISH MAID BAKERY, AND G. BRASHEARS, INDIVIDUALLY AND AS PRESIDENT OF SAID CORPORATION, PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Court of Appeals, as amended on rehearing (R. 166–175), is reported at 204 F. 2d 848. The findings of fact and conclusions of law of the District Court (R. 56–60) are not officially reported.

JURISDICTION

The judgment of the court below was entered on May 12, 1953 (R. 176). On August 3, 1953, Mr. Justice Clark extended the time for filing a petition

for a writ of certiorari to October 9, 1953 (R. 178). The petition was filed on October 9, 1953, and was granted in part on January 18, 1954 (R. 179; 346 U. S. 936). The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

The order allowing certiorari limits review to the following question:

"In view of the fact that exclusive jurisdiction over the subject matter was in the National Labor Relations Board (*Garner* v. *Teamsters Union,* 346 U. S. 485), could the Federal District Court, on application of the Board, enjoin Petitioners from enforcing an injunction already obtained from the State Court?" (346 U. S. 936.)

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended (49 Stat. 449, 61 Stat. 136, 29 U. S. C. (Supp. V) 151, *et seq.*), and of the Judicial Code (28 U. S. C. 1337, 1651, and 2283) are set forth in the Appendix, *infra,* pp. 62–69.

STATEMENT

A. THE UNDERLYING FACTS

Capital Service, Inc., a California corporation doing business in the Los Angeles area under the name of Danish Maid Bakery (herein referred to as Capital), is engaged in the manufacture and dis-

tribution of bakery products (R. 57).[1] Early in February 1952, following prior unsuccessful attempts to organize Capital's employees, representatives of Bakery Drivers Local Union No. 276 (herein referred to as the Union) sought to enlist the aid of the purchasers and consumers of Capital's products in a new organizing effort. Union agents approached the management of various retail stores handling these products and advised that the Union had a dispute with Capital because it was "nonunion" and on the unfair list of the Los Angeles Central Labor Council. Each store was requested to cease handling Capital's products, and was told that, unless it did so, a picket line would be set up (R. 86, 138–139, 142, 144–145).

Several of the stores acceded to the Union's initial request and discontinued purchases of

[1] During 1951, the year preceding the events in this case, Capital purchased raw materials valued in excess of $500,000, approximately $30,000 of which was received directly from points outside of California, and approximately $175,000 of which was received indirectly from outside that state. Moreover, four of the retail grocery markets which sell its products, and whose businesses were affected by the events in this case, annually receive shipments of goods originating out of California in amounts ranging from $250,000 to $1,000,000 (R. 57; 90, 91, 2–3). On these facts, the union activities hereafter described have, as petitioners do not dispute (Pet. 8), a sufficient impact on commerce to be subject to the Board's jurisdiction. *Capital Service, Inc.*, 100 NLRB 1092, motion to modify denied, 106 NLRB No. 27 (July 17, 1953); see *Jamestown Builders Exchange, Inc.*, 93 NLRB 386.

Capital's products (R. 111, 113, 115, 145). At the other stores, the Union established peaceful picket lines, the pickets carrying placards which read (R. 58; 99–100):

TO THE PUBLIC
DANISH MAID
BAKERY PRODUCTS
SOLD HERE ARE MADE
AND DELIVERED BY
A BAKERY THAT IS
NONUNION
AND ON THE
WE DO NOT PATRONIZE LIST
OF THE
LOS ANGELES CENTRAL LABOR COUNCIL
LOS ANGELES FOOD COUNCIL
JOINT COUNCIL OF TEAMSTERS' UNION 42
BAKERY DRIVERS' LOCAL 276
BAKERS' LOCAL NUMBER 37

Some of the picketing was carried on in front of the consumer entrances to the stores, and some occurred at the delivery entrances where the stores received goods from suppliers (R. 97, 129–130, 132, 148–149). Deliverymen bringing supplies to the stores, who themselves were Union members, refused to make their regularly scheduled deliveries upon seeing the pickets (R. 130, 136, 143–144). Moreover, at times the pickets approached the deliverymen and urged them not to cross the picket lines, whereupon the supply trucks would drive off (R. 110, 130, 133). When a store being picketed removed Capital's products from its shelves, the pickets were withdrawn, and

deliveries by suppliers were resumed (R. 115, 127–128, 135, 145–146).

Petitioners countered by seeking relief before both state and federal tribunals. On February 18, 1952, they filed suit for an injunction in the Superior Court of the State of California in and for the County of Los Angeles, alleging that the Union's activities constituted a conspiracy in restraint of trade prohibited by the California antitrust law, commonly known as the Cartwright Act (R. 18–37).[2] Three days later—February 21—they filed an unfair labor practice charge with the National Labor Relations Board's Regional Office, asserting that the same conduct alleged in the state court complaint, engaged in by the same labor organizations specified therein, constituted unfair labor practices within the meaning of Section 8 (b) (4) (A) of the National Labor Relations Act (R. 11–16).[3]

On April 3, 1952, the Superior Court issued a preliminary injunction banning *all* picketing and

[2] Made defendants to this action were the Union, the other labor organizations listed on the placards carried by the pickets, and certain of the retail stores affected by the picketing; the stores, however, were never served with process (R. 118).

[3] The same day, petitioners also filed a civil suit for damages in the federal district court against these labor organizations, on the ground that this conduct was independently unlawful under Section 303 of the Labor Management Relations Act, 61 Stat. 136, 158–159, 29 U. S. C. (Supp. V) 187 (R. 4). This suit is apparently still pending in the district court.

for the purpose of removing the impediment created by enforcement of the Superior Court injunction (R. 1–10).

B. THE PROCEEDINGS IN THE DISTRICT COURT

The complaint in the instant suit (Civil Action No. 14142) alleged that the National Labor Relations Act had preempted regulation of the activities covered by the outstanding Superior Court injunction, and had thereby removed them from the ambit of State regulation. More specifically, the complaint alleged that the Union's picketing at the delivery entrances of the retail stores and its oral requests to deliverymen not to make deliveries constituted inducement of secondary employees to engage in concerted refusals to perform services, proscribed by Section 8 (b) (4) (A) of the Act, and was the subject of the concurrent Section 10 (l) proceeding against the Union (Civil Action No. 14141) in the District Court (R. 7). It was further averred that the remainder of the Union's activities—i. e., appeals to ultimate consumers through picketing at the consumer entrances of the stores—constituted conduct affirmatively protected under Section 7 of the Act (R. 8). Finally, it was alleged that the continued effectiveness of the Superior Court injunction irreparably impaired the Congressional objective of a uniform national labor policy in industries affecting commerce, and nullified, *pro tanto,* Board and district court action in the cases before them involving the same subject matter (R. 9).

After hearing, the District Court entered findings of fact and conclusions of law sustaining the allegations of the complaint (R. 56–60). The court found that all of the described Union activities were in furtherance of a labor dispute with Capital, that they affected commerce within the meaning of the Act, and that the Superior Court injunction regulated the same conduct which was the subject-matter of the proceeding pending before the Board. The court further found that the delivery entrance picketing appeared to constitute a violation of Section 8 (b) (4) (A) of the Act,[5] and that the consumer entrance picketing, though not an unfair labor practice, was

[5] The District Court made the same finding in Civil No. 14141, the suit against the Union, which, because it turned on the same facts as those underlying the instant suit, had been consolidated with the latter for purposes of hearing (R. 89). In the suit against the Union, the court then entered—at the same time that it entered the decree herein against petitioners (p. 10, *infra*)—an injunction enjoining the Union, pending final Board adjudication, from engaging in those of its activities, i. e., the delivery entrance picketing, which appeared to constitute a violation of Section 8 (b) (4) (A) of the Act (R. 76–77). The Union took no appeal.

Subsequently, the Board issued a Decision and Order finding that the delivery entrance picketing did in fact violate Section 8 (b) (4) (A), and entered an appropriate cease and desist order. *Capital Service, Inc.*, 100 NLRB 1092, motion to modify denied, 106 NLRB No. 27 (July 17, 1953). A petition for review of the decision insofar as it declined to find that the consumer entrance picketing was also an unfair labor practice was filed by Capital in the Court of Appeals for the Ninth Circuit, but was thereafter voluntarily dismissed.

within the field covered by the Act and thus preempted thereby (R. 59–60). Accordingly, the court concluded that the Superior Court was without jurisdiction to restrain any of these Union activities, and that its action in doing so invaded the exclusive jurisdiction of the Board and the District Court (R. 60).

In addition, the District Court concluded that the Board was vested with authority to institute the instant suit for the purpose of vindicating the policies of Congress and protecting its own jurisdiction; that a preliminary injunction, pending final determination of the suit, was "necessary and proper to avoid further irreparable impairment of the Congressional objective of a uniform national labor policy in industries affecting commerce, to protect the exclusive jurisdiction of the Board under the Act, and to effectuate the decree of this Court entered simultaneously herewith in Case No. 14141," the suit against the Union; and that "Section 2283 of the Judicial Code does not bar the issuance of said preliminary injunction, for it has no application where, as here, an exclusive Federal jurisdiction is vindicated" (R. 60).

The District Court entered a preliminary injunction enjoining petitioners from "enforcing or seeking to enforce, or in any other manner giving continued effect to or availing themselves of the benefits" of the decree issued by the Superior Court. They were also enjoined "from taking or applying for any further proceedings

in said Superior Court the effect of which would be to enjoin or restrain" the Union "from engaging in peaceful picketing or other concerted activities affecting the customers of Capital Service, Inc., and their suppliers, and which are carried on pursuant to a labor dispute with Capital Service, Inc." (R. 61).

C. THE DECISION OF THE COURT OF APPEALS

On appeal, the Court of Appeals agreed that regulation of all the conduct covered by the Superior Court injunction was preempted by the Act.[6] Accordingly, it affirmed the order of the District Court, stating briefly that "the control by the federal tribunals is exclusive" (R. 174–175).

SUMMARY OF ARGUMENT

A. The authority of the Board to initiate this suit is clear. The Act by implication authorizes the Board to institute such legal proceedings as are necessary to protect its jurisdiction and to effectuate its statutory duty to administer the Act so as to carry out the policy of Congress.

[6] The court below, however, differed in part with the District Court over the extent to which the Act prohibited the Union activities involved. It agreed that the delivery entrance picketing constituted an unfair labor practice under Section 8 (b) (4) (A), but concluded that the consumer entrance picketing, rather than being conduct protected by Section 7 of the Act, also constituted an unfair labor practice, violating Section 8 (b) (1) (A). Both courts agreed, however, that all of the picketing constituted activities over which the Act gave the Board exclusive jurisdiction.

Numerous cases have upheld the Board's right to seek judicial remedies necessary to prevent frustration of the Act's purposes (*e. g., Amalgamated Utility Workers* v. *Consolidated Edison Co.,* 309 U. S. 261, 269–270; *Nathanson* v. *National Labor Relations Board,* 344 U. S. 25). As is reflected in the order allowing certiorari, the union conduct made subject to the state court injunction has been foreclosed to state regulation; the federal regulatory procedure established in the Act is exclusive. Unless the Board were empowered to take appropriate steps to vindicate the supremacy of the Act here, the effectiveness of the exclusive federal regulation would be left to the fortuity that private litigants would raise that issue in local proceedings or appeal adverse decisions. Moreover, the federal scheme of regulation is impaired by issuance of a temporary injunction even though it may later be set aside by a higher state court. Sweeping injunctions against all picketing, however temporary in duration, tend to "make the issue of final relief a practical nullity" (Frankfurter and Greene, *The Labor Injunction* (1930), p. 200).

B. The District Court properly asserted jurisdiction of this case under Section 10 (l) of the Act and Sections 1337 and 1651 of the Judicial Code. Section 10 (l) provides that the Board's General Counsel, if he finds that an unfair labor practice complaint under Section 8 (b) (4) (A), *inter alia,* shall file a petition in the

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proper District Court "for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the District Court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law * * *." Section 1337 of the Judicial Code is applicable because the Board's complaint showed on its face that the cause of action arose "under [an] Act of Congress regulating commerce" within the meaning of that Section.

Section 1651 is also relevant to this case. The state court order dealt with and treated differently the same activities which were before the District Court in the Section 10 (l) proceeding. In order to preserve the district court's jurisdiction and make effective such order as it might finally enter, it was necessary to neutralize the effects of the state court decree. Accordingly, the District Court properly invoked its power, under Section 1651, to "issue all writs necessary or appropriate in aid of [its] jurisdiction * * *"

C. The grant of injunctive relief by the district court constituted a proper exercise of its equitable powers. The state court order, in regulating conduct which was intended to be regulated exclusively under the provisions of the Act, operated as an effective bar to the application of Congressional policy in this case, and accordingly

resulted in irreparable harm to that policy. Indeed, it represented not only a substitution of local procedures for those provided in the Act, including the discretionary functions of the General Counsel of the Board in unfair labor practice cases, but in addition it reflected a contrary substantive evaluation of the case than that made with respect to the identical factual situation under the provisions of the Act.

The fact that the question of federal supremacy could have been raised in the state court does not preclude jurisdiction in the district court to grant the Board's request for an injunction. The Board was not a party to the proceeding in the Superior Court, and neither intervention by the Board nor the possibility that the private adversaries might litigate the question furnishes adequate protection for the public rights created by the Act. Moreover, it is plain that the important and often decisive function of determining the facts in labor disputes covered by the Act was meant to be placed in the specialized tribunals designated by Congress, not in local tribunals.

Neither does the pendency of state litigation require, in this case, that the federal court should have stayed its hand with respect to proceedings involving the same subject matter. Deference to local tribunals by a federal court is not required where, as here, the orderly functioning of an exclusive scheme of federal regulation is at stake, and

where the continuing existence of an outstanding inconsistent state court injunction would be harmful not only to the rights of the parties "but to the public interest which Congress deemed it wise to safeguard" (*Public Utilities Commission* v. *United Fuel Gas Co.,* 317 U. S. 456, 469). In such circumstances a federal court is clearly empowered to grant appropriate equitable relief.

D. The prohibition against federal court injunctions "to stay proceedings in a State court," contained in Section 2283 of Title 28 of the United States Code does not operate as a bar to the District Court's injunction in this case. Before this Section was amended in 1948, it was established that its predecessor, Section 265 of the Judicial Code of 1911, had application only where, unlike here, in deference to principles of comity it would be appropriate to avoid "needless friction between two systems of courts having potential jurisdiction over the same subject-matter" (*Hale* v. *Bimco Trading Co.,* 306 U. S. 375, 378). There is no occasion for an application of this rule here, for jurisdiction over the subject matter in this case has been foreclosed to the states by Congress, and has been vested exclusively by the Act in a federal agency and the federal courts (*Bowles* v. *Willingham,* 321 U. S. 503, where Section 265 was held not to preclude an injunction staying state court proceedings because, *inter alia,* jurisdiction over the subject matter of the state court suit had

been vested exclusively in the Emergency Court of Appeals).

The replacement in 1948 of Section 265 by the present Section 2283 in no way affected the inapplicability of the provision to situations, like this, where federal jurisdiction is exclusive and not concurrent. The principal purpose of the changed wording was to make explicit that federal courts were empowered to grant such injunctions against state court proceedings where "expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." These express exceptions to Section 2283 remove this case from its general prohibition. Because the outstanding state court order threatened the efficacy of the District Court's injunction in the Section 10 (l) proceeding, restraint of that order was "necessary in aid of [the district court's] jurisdiction" and "to protect or effectuate its judgments," within the authorization of the second and third exceptions to Section 2283. Moreover, the district court's injunction also falls within the excepting language which permits restraint of state court proceedings where such action is "expressly authorized by Act of Congress." For the Act constitutes express legislation foreclosing state proceedings dealing with the subject matter covered by the Act, and establishing an exclusive scheme of federal regulation enforceable, where it may become necessary, by appropriate injunctive relief di-

rected against state court proceedings (*Bowles* v. *Willingham, supra; Porter* v. *Dicken,* 328 U. S. 252, 255).

ARGUMENT

THE FEDERAL DISTRICT COURT, UPON APPLICATION OF THE BOARD, COULD PROPERLY ENJOIN PETITIONERS FROM ENFORCING THE INJUNCTION OBTAINED FROM THE STATE COURT

INTRODUCTION

Under the limited grant of certiorari the only question presented for review by this Court is whether the District Court, acting on the Board's application, had jurisdiction to enter a preliminary decree enjoining petitioners from enforcing the injunction previously issued by the Superior Court of California. The premise on which the question is based, as stated in the Court's order, is that "exclusive jurisdiction over the subject matter was in the National Labor Relations Board (*Garner* v. *Teamsters Union,* 346 U. S. 485)." It is not open to question, therefore, that here, as in the *Garner* case, the subject-matter of the controversy rested exclusively within federal jurisdiction and "the grievance was not subject to litigation in the tribunals of the State" (346 U. S. at 501).

In this fundamental respect, i. e., the lack of jurisdiction in the state courts, this case and *Garner* are alike. In each case the petitioners obtained from a state court an injunction which

it was beyond the power of that court to grant. This case differs from *Garner* only in the manner in which it was sought to annul the unauthorized exercise of jurisdiction by the state trial court. In the *Garner* case the respondents appealed to the Supreme Court of Pennsylvania, which reversed with directions that the complaint be dismissed for want of jurisdiction (373 Pa. 19, 94 A. 2d 893). When the case came before this Court on certiorari, the Board filed a brief as *amicus curiae* urging affirmance. This Court, agreeing with the Supreme Court of Pennsylvania that there was a lack of jurisdiction in the state courts, affirmed (346 U. S. 485).

In the *Garner* case no charge based on the alleged unfair labor practices (constituting the same misconduct which gave rise to the suit in the state court) had been filed with the National Labor Relations Board; and no administrative proceedings concerning the matter were before the Board at any time during the state litigation. In this case, however, a charge of unfair labor practices was filed by petitioners with the Board on February 21, 1952, three days after they instituted suit in the Superior Court (R. 11–16). The matter was thus pending before the Board when, on April 3, 1952, the Superior Court issued its decree (R. 40–42). The Board was not a party to the state court proceeding, and the unions enjoined by the decree of the Superior Court took no appeal. Instead, unlike the

Garner case, the forum was moved immediately to the federal tribunals. On May 14, 1952, the Board's Regional Director issued an unfair practice complaint against the Union, and on the same day, for the purpose of protecting the Board's jurisdiction and preserving the exclusive regulatory scheme of the Act, filed the instant suit and the companion suit against the Union in the District Court (R. 1–10, 66–70).

The issue thus presented, which was not involved in the *Garner* case, is whether a federal district court, upon appropriate application by the Board in a case where the same subject-matter is before both the Board and a state court, can enjoin enforcement of the state court decree in order to preserve and vindicate the Board's exclusive jurisdiction. The affirmative answer given by both courts below is, we submit, entirely correct. As we show below, it is supported by the provisions and policy of the Labor-Management Relations Act and by the applicable provisions of law bearing on the jurisdiction and powers of the federal district courts to grant such relief. Section 2283 of the Judicial Code, we further submit, clearly does not preclude injunctive relief against state court proceedings in circumstances such as are here involved.

A preliminary question, to which we now turn, is whether the Board had capacity to bring this case in the District Court.

by this Court (*Garner* v. *Teamsters Union*, 346 U. S. 485, 490):

> Congress did not merely lay down a substantive rule of law to be enforced by any tribunal competent to apply law generally to the parties. It went on to confide primary interpretation and application of its rules to a specific and specially constituted tribunal and prescribed a particular procedure for investigation, complaint and notice, and hearing and decision, including judicial relief pending a final administrative order. Congress evidently considered that centralized administration of specially designed procedures was necessary to obtain uniform application of its substantive rules and to avoid these diversities and conflicts likely to result from a variety of local procedures and attitudes toward labor controversies. * * *

Moreover, to insure the attainment of this objective, Congress banned all State regulation—whether by legislature, administrative agency, or court[8]—in "the field that the act covers" (H. Rept. No. 245, 80th Cong., 1st Sess., 44). As the court below recognized (R. 175), Section 10 (a) of the Act makes such intention manifest, by providing that the Board's "power shall not be affected by any other means of adjustment or prevention," and by specifying the limited cir-

[8] See *Auto Workers* v. *O'Brien*, 339 U. S. 454; *Bethlehem Steel Co.* v. *New York State Labor Relations Board*, 330 U. S. 767; *Garner* v. *Teamsters Union*, 346 U. S. 485.

cumstances under which the Board alone may grant the States authority to regulate in the pre-empted federal field. (See also *Bus Employees* v. *Wisconsin Board,* 340 U. S. 383, 397, n. 23.)

The supremacy of the Act in the field which it occupies could be readily impaired unless the Board were empowered to take appropriate legal steps to check encroachments on its exclusive jurisdiction. Thus, were the Board helpless to seek elimination of such encroachments by a state court, their elimination would depend entirely upon such fortuitous factors as whether the defendant contested the state court action on the ground of federal supremacy, or whether the defendant had the desire and the funds to appeal the action to a higher state court, and, if need be, to this Court. Without power in the Board to take appropriate steps to vindicate the federal regulatory authority, an absence of any one of these factors would result in effective state interference with the Board's exclusive jurisdiction. The Board " 'as the representative of the public has an interest apart from that of the individuals affected' " (*Hopkins Federal Savings & Loan Ass'n* v. *Cleary,* 296 U. S. 315, 339–340). There is no reason to suppose that Congress meant in this situation to depart from the basic purpose of entrusting "the vindication of the desired freedom of employees * * *, by reason of the recognized public interest, to the public agency the Act creates," and to permit a haphazard enforcement

of the law in local tribunals by private litigants whose interests do not extend beyond their adversary status. *Amalgamated Utility Workers v. Consolidated Edison Co.*, 309 U. S. 261, 266.[9]

Moreover, even where there is a successful appeal to a higher state court, made on grounds of federal supremacy, from a state court order which improperly regulates conduct covered by the Act, federal labor relations policy nonetheless is seriously harmed. For Congress, in the Act, has carefully balanced the rights and obligations of labor organizations in their relations with employers and employees. And, as Congress well knew when it enacted the Norris LaGuardia Act in 1932,[10] even a temporary restraint on the activities of a union, in a test of its economic strength against an employer, is normally sufficient to terminate these activities. "The preliminary proceedings, in other words, make the issue of final relief a practical nullity. * * * The injunction cannot preserve the so-called *status quo;* the situation does not remain in equilibrium awaiting judgment upon full knowledge." Frankfurter and Greene, *The Labor Injunction* (1930),

[9] Congressional recognition of the importance of the participation of government agencies in litigation involving statutes which they administer is reflected in Rule 24 (b) of the Federal Rules of Civil Procedure. Provision is there made for intervention by such agencies in district court litigation where a claim or a defense relies on such statutes. See Note, 65 Harv. L. Rev. 319, 321, 327–328.

[10] 47 Stat. 70, 29 U. S. C. 101, *et seq.*

pp. 200–201. In this case, for example, the state court order forbade all picketing by the Union. To the extent that this inclusive ban threw federal regulation out of balance, its deleterious impact was likely to be permanent, unless its effectiveness could expeditiously be nullified.[11] In these circumstances, it matters little that opportunity was available for the Union to appeal the order directed against it to a higher state court, and, if need be, to this Court. The delay inherent in such review procedures renders them useless to restore the balance where Congress placed it.[12]

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[11] The validity of this consideration is well illustrated in a study made of injunctions issued by Department 34 of the Superior Court of California, where the State injunction in this case was issued. Of a total of 120 suits for injunctions brought by employers which were studied, only 4 reached the trial stage. Aaron and Levin, *Labor Injunctions in Action*, 39 Calif. Law Rev. 42, 53. While California law would have afforded the Union in this case an opportunity to appeal from the Superior Court's order granting a preliminary injunction (Section 963 of California Code of Civil Procedure; *Burton* v. *Tearle*, 7 Cal. 49, 52, 59 P. 2d 953), the order would not automatically have been stayed (*Canavarro* v. *Local Union No. 9*, 15 Cal. 2d 495, 101 P. 2d 1081). And as the Supreme Court of California has observed, a "supersedeas [to stay the effect of preliminary injunctions] will not be granted except in rare circumstances." *Id.* at 101 P. 2d 1082.

[12] These considerations are accentuated by this Court's recent decision in *Montgomery Building Trades* v. *Ledbetter*, 344 U. S. 178, holding that a state court preliminary injunction similar to that here was not a "final order" within the meaning of 28 U. S. C. 1257. Under this holding, it would appear that, if a state court preliminary injunction which

The statutory implication of authority in the Board to take legal steps to protect its exclusive jurisdiction under the Act is particularly clear where, as here, the conflicting state proceeding involves the identical conduct and parties which are at the same time involved in proceedings before the Board. Thus, in this case Capital filed a charge with the Board that the Union, by the same conduct alleged in the complaint in the state court, had committed an unfair labor practice under the Act. The General Counsel of the Board, in accordance with statutory provisions, investigated the charge, and administratively determined that the Union's activities in part constituted a violation of Section 8 (b) (4) (A) of the Act and in part were protected by Section 7 of the Act. An unfair labor practice complaint was thereupon issued, limited to the asserted violation of Section 8 (b) (4) (A), and pursuant to the requirement of Section 10 (l), a temporary injunction was sought and obtained from the district court pending the Board's hearing and decision in the matter.

The existing state court injunction against all of the Union's activities in effect had substantially predetermined the issues before both the District Court and the Board, and in a man-

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invaded an exclusive federal jurisdiction were ever to be reviewed by this Court, this could only be achieved by means of the procedure utilized herein, i. e., an independent equity suit in the federal district court.

ner that was inconsistent with the District Court's decision in the suit against the Union. In short, as matters stood, the statutory authority of the Board and the federal district court to protect the lawful activities of labor organizations and to remedy unfair labor practices committed by them had been nullified by the state court. If the Board were not authorized to invoke the equity powers of the district court to remedy this situation, the policy of the Act would plainly and irreparably have been impaired.

The existence of Board capacity to initiate suits in similar situations has consistently been recognized. Thus, lower federal courts have affirmed the Board's "power to sue in the district court to enjoin" state action where state regulatory agencies have invaded either the Board's exclusive unfair labor practice jurisdiction (*National Labor Relations Board* v. *New York Labor Relations Board,* 106 F. Supp. 749 (S. D. N. Y.)), or the Board's exclusive jurisdiction to conduct representation proceedings (*National Labor Relations Board* v. *Industrial Commission of Utah,* 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10)). Similarly, the Board's right to seek injunctions from courts of appeals against attaching creditors of the recipients of back pay awards, following decree enforcing those awards, has been upheld (*National Labor Relations Board* v. *Underwood Machinery Co.,* 198 F. 2d 93 (C. A. 1);

National Labor Relations Board v. *Sunshine Mining Co.,* 125 F. 2d 757 (C. A. 9)).

The same has been true of other Federal regulatory agencies. The Securities and Exchange Commission, because of its "interest in the maintenance of its statutory authority and the performance of its public duties", has been held to have authority, although not expressly granted it, to intervene "to prevent reorganizations, which should rightly be subjected to its scrutiny, from proceeding without it" (*Securities and Exchange Commission* v. *United States Realty and Improvement Co.,* 310 U. S. 434, 460). The Wage and Hour Administrator's authority to apply to a federal district court for an injunction to enforce an industry wage order has been upheld, even though the Fair Labor Standards Act does not expressly so provide, on the ground that such authority was essential "in the administration of the statute, to the end that the Congressional purposes underlying its enactment shall not be thwarted" (*Walling* v. *Brooklyn Braid Co.,* 152 F. 2d 938, 940–941 (C. A. 2)).

In sum, capacity in the United States or one of its agencies to seek the injunctive aid of a court of equity is implied, unless the applicable statutory provisions forbid, where such action is required "in removing unlawful obstacles to the fulfillment of its obligations." *United States* v. *Minnesota,* 270 U. S. 181, 194.

B. THE DISTRICT COURT HAD JURISDICTION OVER THE SUBJECT MATTER OF THIS PROCEEDING

The District Court rested its assertion of jurisdiction over this case on Sections 1337 and 1651 of Title 28 of the United States Code (R. 59). These provisions, coupled with Section 10 (l) of the Act, furnish unequivocal support for the jurisdiction of the district court to enter the decree here involved.

1. Section 1337 (Appendix, *infra,* p. 68) extends original jurisdiction to the district courts "of any civil action or proceeding arising under any Act of Congress regulating commerce * * *." The Board's cause of action in this case is based upon the alleged illegality under the provisions of the National Labor Relations Act, an act regulating commerce, of a state court order purporting to regulate conduct for which Congress, in the Act, has established an exclusive federal scheme of regulation. Thus, the Board's complaint alleges that a substantial amount of raw materials are purchased by Capital from sources outside the State of California; that the retail food markets served by Capital also do a large amount of interstate business; and that in consequence Capital's operations affect commerce within the meaning of the Act (R. 2–3). It is further alleged that all of the union conduct which the state court, by its order, had undertaken to regulate was within the field covered exclusively by the Act, and for that reason "the

Superior Court decree is contrary to the provisions of the Act * * *" (R. 8–9, 7). Without more, it is plain that this is a "civil action or proceeding arising under [an] Act of Congress regulating commerce," and that the district court was therefore vested with jurisdiction over it by Section 1337.

The correctness of this conclusion is confirmed by *A. F. of L.* v. *Watson*, 327 U. S. 582. The complaint there, as here, alleged that a state had undertaken to prohibit certain kinds of union activities which were governed by the provisions of the National Labor Relations Act. In upholding the assertion of federal jurisdiction to decide the controversy, this Court concluded (p. 591) that "since the right asserted is derived from or recognized by a federal law regulating commerce, * * * a suit to protect it against impairment by state action is a suit 'arising under' a federal law 'regulating commerce'" (citing cases). And see *In re Standard Gas & Electric Co.*, 139 F. 2d 149, 152 (C. A. 3); *Board of Governors of Federal Reserve System* v. *Transamerica Corp.*, 184 F. 2d 311 (C. A. 9).

2. Section 10 (l) of the Act (Appendix, *infra*, pp. 67–68) provides that whenever the General Counsel of the Board has reasonable cause to believe that a complaint should issue, charging an unfair labor practice within Section 8 (b) (4) (A), *inter alia*, he shall file a petition on behalf of the Board in the proper district court "for

appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law * * *." The District Court's invocation of Section 1651, the all-writs section (Appendix, *infra,* p. 68), as an alternative basis for its jurisdiction, is premised upon the necessity of protecting its injunction issued pursuant to Section 10 (l) of the Act in the unfair labor practice case involving the same subject-matter as this case. As we have shown (*supra,* pp. 6–7), the General Counsel of the Board issued a complaint alleging that part of the Union's activities constituted an unfair labor practice prohibited by Section 8 (b) (4) (A) of the Act, and, in accordance with the requirements of Section 10 (l), simultaneously applied for and obtained a temporary injunction against the 8 (b) (4) (A) aspect of the Union's activities. In entertaining the General Counsel's request for this temporary injunction, the District Court was exercising its exclusive primary jurisdiction, to the extent specified in Section 10 (l), to determine how much of the Union's activities should be prohibited by injunction, pending the final adjudication by the Board with respect to the alleged unfair labor practices. (See R. 59.) The outstanding state court order, however, seriously

threatened the efficacy of the District Court injunction. For the Superior Court of California, in addition to invading the field thus reserved to the district court and imposing its own sanctions, had prohibited *all* of the Union's activities, while the district court's injunction prohibited them only in part.

In these circumstances, it was both necessary and appropriate for the District Court to take steps to protect its jurisdiction and effectuate its judgments. The power to do so is conferred by Section 1651, which provides that "* * * all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions agreeable to the usages and principles of law." The application of this provision in situations where, as here, injunctive protection of a federal court's jurisdiction is essential has long been settled. (See, e. g., *Continental Bank* v. *Rock Island Ry.*, 294 U. S. 648, 676; *Toledo Co.* v. *Computing Co.*, 261 U. S. 399, 426; *Merrimack River Savings Bank* v. *City of Clay Center*, 219 U. S. 527, 534–535; *National Labor Relations Board* v. *Underwood Machinery Co.*, 198 F. 2d 93 (C. A. 1); *In re Standard Gas & Electric Co.*, 139 F. 2d 149, 152 (C. A. 3). Cf, *Board of Governors of Federal Reserve System* v. *Transamerica Corp.*, 184 F. 2d 311 (C. A. 9).)

C. ISSUANCE OF THE INJUNCTION BY THE DISTRICT COURT WAS A PROPER EXERCISE OF ITS EQUITY JURISDICTION

Having found that the Superior Court of California was without jurisdiction to restrain the Union activities in this case, and that in doing so it had invaded a field for which Congress had provided a system of exclusive federal regulation, the District Court concluded that the exercise of its equity powers was both necessary and appropriate. As stated in its Conclusions of Law (R. 60):

> A preliminary injunction as prayed, pending final determination of the complaint, is necessary and proper to avoid further irreparable impairment of the Congressional objective of a uniform national policy in industries affecting commerce, to protect the exclusive jurisdiction of the Board under the Act, and to effectuate the decree of this Court entered simultaneously herewith in Case No. 14141–HW [the suit against the Union].

In large measure, the reasons supporting the District Court's conclusion in this respect are the same as those which have been discussed, *supra*, pp. 20–29), in showing that the Board is empowered to bring this action. For just as the necessity for equity relief to prevent frustration of the Act's provisions properly serves as the basis for implying authority in the Board to seek such relief, so does the same impelling necessity warrant the exercise of the District Court's inherent equity

permitted to stand, for in that case the state court injunction has, as a practical matter, supplanted federal regulation.

The irreparable character of the inroad thus made into federal policy is emphasized by the decisive significance, to which we have alluded *supra,* p. 25, which even a temporary restraint has in the field of labor-management relations. Eventual vindication of the principle of federal supremacy is rarely, if ever, sufficient to offset in the particular case the impact of an effective sanction, timed, as was the state court order here, to put an immediate stop to all union activities.[14] In these circumstances we think it clear that the frustration of federal policy which the state court order accomplished represented an appropriate occasion for invoking the inherent equity powers of the District Court.

Here, as in *A. F. L.* v. *Watson,* 327 U. S. 582, a showing has been made that State action has imposed standards of conduct which conflict with those established in the Act, and that the result is "repercussions on the relationship between capital and labor as to cause irreparable damage" (327 U. S. at 595). In both cases the harm, although very real, is to "matters involving intangible values," and not susceptible of remedial action at law. *Id.,* at 594. For these reasons, we be-

[14] See also p. 25, n. 12, *supra.*

lieve that here, as in the *Watson* case, there is "a cause of action in equity" (*Id.* at 595).[15]

Although the State court litigation was open to the issue of exclusive Federal jurisdiction, that factor does not weaken the necessity for intervention by a Federal court exercising its equity powers.[16] As we have already pointed out *supra,* there is no certainty that the private party made defendant in an action of this kind, here the Union, will contest an application for State action on this ground.[17] The statutory importance of regulating the conduct of employers and labor

[15] There is, of course, no occasion here to invoke the rule recently applied by this Court in *Public Service Commission v. Wycoff Co.*, 344 U. S. 237, that injunctive relief is inappropriate where "there is no proof of any threatened or probable act of the defendants which might cause the irreparable injury essential to equitable relief * * *" (344 U. S. at 241). See also *Public Utilities Commission* v. *United Air Lines*, 346 U. S. 402. As we have shown, the injury in this case was immediate and irreparable upon issuance of the state court order, and continued until the injunction was issued here by the District Court.

[16] The adequacy of a state court remedy in any event would not militate against the exercise of equity powers by a federal court. *Petroleum Exploration, Inc.* v. *Public Service Commission*, 304 U. S. 209, 217.

[17] The memorandum opinion of the Superior Court accompanying the issuance of its injunctive order in this case reveals no awareness of the preemption issue (R. 42–45). Following the Superior Court's decision the Union moved to vacate the order on the ground, *inter alia*, "that the Court was without jurisdiction * * * [and] that the National Labor Relations Board has assumed jurisdiction of all the matters at issue herein" (R. 46). However, the motion was summarily denied (see p. 6, *supra*).

unions in accordance with policies deemed by Congress to be in the public interest cannot always be expected to coincide with the litigation strategy and tactics which private defendants may feel most beneficial to their own interests. And, while the Board's representations to a State court might be fully adequate, there is no certainty that it will be able to make its position known. In the first place, the Board may not have notice of State court actions within the field covered by the Act until after the court has acted and the time for "intervention" has run out[18] (Cf. *Porter* v. *Lee,* 328 U. S. 246). But even if there is ample notice, the Board is not made a party in the usual case—it was not in this case—and its standing to participate in the proceeding depends on the intricacies of local practice. In this instance, for example, intervention before the Superior Court may be accomplished only "by leave of the court," and this may be done only "before trial." Section 387, California Code of Civil Procedure. (See *Allen* v. *California Water and Tel. Co.,* 31 Cal. 2d 104, 107–109, 187 P. 2d 393.) Plainly, this route is too conjectural and hazardous to provide adequate protection for the public rights which the Act creates. (See *Brillhart* v. *Excess Ins.*

[18] In this case Capital filed its complaint in the Superior Court and its charge with the Board about the same time (R. 11, 17, 37). However, the charge contained no mention of the fact that Capital was seeking similar relief in another forum.

Co., 316 U. S. 491, 495.) Particularly is this so in view of the critical importance to the effectiveness of the Federal regulatory plan, as we have shown, of an immediate and continuous application of the Act's provisions in the field it covers.[19]

Moreover, there is no good reason why the Board, as trustee of the public rights created by the Act, should place those rights in litigation in local tribunals where it was not made a party and is not bound by the decision, even though the effectiveness of the Act is at stake (cf. *Hale* v. *Bimco Trading Co.*, 306 U. S. 375, 377–378). On the contrary, the Act itself makes clear that the adjudication of its provisions is a responsibility to be borne by the Board and the federal judiciary exclusively. This is particularly important where, as in cases arising under the Act, decision is likely to turn upon the determination of facts and the evaluation of evidence. To submit what is alleged to be, as here, an unfair labor practice case to state court determination, with their "variety of local procedures and attitudes toward labor controversies" (*Garner, supra,* p. 22), is to subject the state courts to a burden which Congress has spared them. The possibility or

[19] Even more hazardous and inadequate is the opportunity which may be afforded to the agency to appear as *amicus curiae* for "the original parties may rest content with a resolution of the question of law in the trial court which the agency may find prejudicial, and an amicus cannot appeal" Berger, *Intervention by Public Agencies In Private Litigation In The Federal Courts*, 50 Yale L. J. 65, 68.

hope of eventual review of the federal issues by this Court counts for little where the factual findings are made by nonfederal tribunals which are less "at home" in this specialized field than the agencies which Congress has designated to carry out its mandate (Cf. Frankfurter, J., concurring in *Alabama Public Service Commission* v. *Southern Ry. Co.,* 341 U. S. 341, 361); *Prentis* v. *Atlantic Coast Line,* 211 U. S. 210, 228.)

The leading cases of *Lord Portarlington* v. *Soulby,* 3 *Mylne & Keen* 104, and *Kempson* v. *Kempson,* 58 N. J. Eq. 94, as Dean Ames stated, "illustrate the inherent power of equity to restrain a person within its jurisdiction from taking legal proceedings without the jurisdiction. Whether this power should be exercised in a particular case is determined by considerations of fitness and expediency." See Chafee and Simpson, *Cases on Equity,* Vol. I, pp. 161–175. In deference to "the appropriate relationship between federal and state authorities functioning as a harmonious whole", *Chicago* v. *Fieldcrest Dairies,* 316 U. S. 168, 172–173, a federal court may decline to grant such relief where, unlike here, it must first construe a state statute or make a decision with respect to state law or policy which either is or may be presented before local tribunals which have the final word on such matters. (See, e. g., *Alabama Public Service Commission* v. *Southern Ry. Co.,* 341 U. S. 341; *Spector Motor Co.* v. *McLaughlin,* 323 U. S. 101; *Burford* v. *Sun Oil Co.,* 319 U. S. 315; *Douglas* v. *Jeannette,*

319 U. S. 157; *Watson* v. *Buck,* 313 U. S. 387; *Railroad Commission* v. *Pullman Co.,* 312 U. S. 496. See Note, 56 Harv. L. Rev. 825.) Even in that situation "Equitable relief may be granted * * * when the District Court, in its sound discretion exercised with the 'scrupulous regard for the rightful independence of state governments which should at all times actuate the federal courts,' is convinced that the asserted federal right cannot be preserved except by granting the 'extraordinary relief of an injunction in the federal courts' " (*Alabama Public Service Commission* v. *Southern Ry. Co.,* 341 U. S. 341, 349).[20]

Thus, in *Public Utilities Commission* v. *United Fuel Gas Co.,* 317 U. S. 456, the overriding importance of protecting the federal rights involved, which, as in this case, were derived from federal regulatory legislation that was meant to be exclusive in its field, was held by this Court to warrant the issuance of injunctive relief notwithstanding the existence of state litigation relating to the same subject matter. The principal issue on the merits in that case was whether the Natural Gas Act (52 Stat. 821, 15 U. S. C. 717) made unlawful the attempt of a state commission, by appropriate proceedings before it, to regulate interstate gas rates. This Court ruled in the affirmative. In reaching this issue, however, the Court rejected the contention that the state might fix

[20] Compare *Markham* v. *Allen,* 326 U. S. 490, 495; *Meredith* v. *Winter Haven,* 320 U. S. 228, 235–236; *Wilcox* v. *Consolidated Gas Co.,* 212 U. S. 19.

rates for interstate gas companies prior to the enactment of the federal legislation, holding that under state law there was no authority to fix rates retroactively, and that this would be the necessary effect of the pending rate proceeding in the state. Having concluded that the state proceeding invaded a federally preempted field, the Court turned to the appropriateness of equitable relief (317 U. S. at 468–469):

> It is perhaps unnecessary at this late date to repeat the admonition that the federal courts should be wary of interrupting the proceedings of state administrative tribunals by use of the extraordinary writ of injunction. But this, too, is a rule of equity and not to be applied in blind disregard of fact. And what are the commanding circumstances of the present case? First, and most important, the orders of the state Commission are on their face plainly invalid. No inquiry beyond the orders themselves and the undisputed facts which underlie them is necessary in order to discover that they are in conflict with the federal Act. If, therefore, United complies with these orders, it will be put to the expenditures incident to ascertaining the base for rate-fixing purposes—expenses which may ultimately be borne by the consuming public and which Congress, by conferring exclusive jurisdiction upon the federal regulatory agency, necessarily intended to avoid. If United does not comply with the orders, it runs the risk of

> incurring heavy fines and penalties or, at the least, in provoking needless, wasteful litigation. In either event, enforcement of the Commission's orders would work injury not assessable in money damages, *not only to the appellee but to the public interest which Congress deemed it wise to safeguard* by enacting the Natural Gas Act. In these circumstances, we cannot set aside the decree of the District Court as an improper exercise of its equitable jurisdiction. [Emphasis supplied.]

Here, as in the *United Fuel* case, the encroaching state order is on its face "plainly invalid." The conflict with federal law requires "no inquiry beyond the order * * * and the undisputed facts which underlie [it]." And here, as we have shown, the continued effectiveness of the Superior Court's order would be harmful "not only to the [Union] but to the public interest which Congress deemed it wise to safeguard." On the other hand, there is even less difficulty in justifying the action of the District Court in this case than in the *United Fuel* case, for here there was no need to consider any state statutes or invoke state policy. The single issue before the District Court here was whether the federal law had foreclosed the state court action. To suggest that a federal court should defer to a state tribunal on this matter is to advocate "that the entire federal controversy * * * be ousted from the federal

courts, where it was placed by Congress" (*Propper* v. *Clark,* 337 U. S. 472, 491–2).[21]

Accordingly, federal courts have consistently granted preliminary injunctions in situations like this, where the Congressional objective of a uniform national labor policy is impaired by state action (*National Labor Relations Board* v. *Industrial Commission of Utah,* 84 F. Supp. 593 (D. Utah), affirmed, 172 F. 2d 389 (C. A. 10); *United Office and Professional Workers* v. *Smiley,* 77 F. Supp. 659 (M. D. Pa.); *Linde Air Products* v. *Johnson,* 77 F. Supp. 656 (D. Minn.); *Food, Tobacco Workers* v. *Smiley,* 74 F. Supp. 832 (E. D. Pa.), affirmed, 164 F. 2d 922 (C. A. 3). Cf., *All American Airways, Inc.* v. *Cedarhurst,* 106 F. Supp. 521 (E. D. N. Y.), affirmed, 201 F. 2d 273 (C. A. 2); *Board of Trade* v. *Illinois Commerce Commission,* 156 F. 2d 33 (C. A. 7), affirmed, 331

[21] It should be emphasized that the District Court's injunction in this case, as in the *United Fuel* case (317 U. S. at 470), in no way obstructs the state court from proceeding in any other phase of the litigation before it which does not infringe upon the federal jurisdiction established in the Act. Capital's complaint before the Superior Court contained counts with respect to conspiracy in restraint of trade by retail grocery markets as well as the Union in violation of California legislation (*supra,* p. 5). The injunction issued by the Superior Court, however, was directed not against any conspiracy in restraint of trade but solely against the picketing which was the subject of the proceeding before the Board; and the injunction granted by the federal District Court in no way precludes petitioners from taking further legal action in the state courts in pursuance of their contention that such an unlawful conspiracy existed (see pp. 48–49, *infra*).

U. S. 218; *Merced Dredging Co.* v. *Merced County,* 67 F. Supp. 598 (S. D. Cal.)). The injury to the public interest wrought by the assertion of an infringing jurisdiction is, as we have shown, immediate, and is very likely to be permanent unless expeditiously eliminated. In sum, the District Court, which could "go much farther" in exercising its equity powers "in furtherance of the public interest than * * * when only private interests are involved" (*Virginian Ry.* v. *Federation, No. 40,* 300 U. S. 515, 552), properly exercised its equity jurisdiction in granting the injunctive relief here sought by the Board.

D. SECTION 2283 OF THE JUDICIAL CODE DOES NOT PRECLUDE THE INJUNCTIVE RELIEF GRANTED BY THE DISTRICT COURT

Section 2283 of the Judicial Code (28 U. S. C.) reads as follows:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

This provision, enacted in 1948, is a revised version of Section 265 of the Judicial Code of 1911, the substance of which has been embodied in our statutes since 1793, expressing "an important Congressional policy—to prevent needless friction between state and federal courts" (*Oklahoma Packing Company* v. *Gas Company,* 309 U. S. 4, 8–9). See *Toucey* v. *N. Y. Life Ins. Co.,* 314 U. S.

118, 129–132. We shall show that: (1) the injunction obtained by the Board herein would have fallen outside the scope of Section 265; (2) the revised language of Section 2283 made no such change as would bring the injunction within the provision's ambit; and (3) in any event, the District court's injunction is saved from the ban of Section 2283 by falling within one or more of the exceptions enumerated in that section.

1. *The injunction obtained by the Board would have fallen outside the scope of Section 265 of the Judicial Code of 1911*

The immediate predecessor of Section 2283, Section 265 of the Judicial Code of 1911, flatly provided that—except in certain bankruptcy situations—the "writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State" (see Appendix, p. 69). Despite the provision's apparently blanket ban, it was pointed out in *Smith* v. *Apple*, 264 U. S. 274, 279, that "repeated decisions of this Court" have established that it "does not prohibit in all cases injunctions staying proceedings in a state court. Such injunctions may be granted, consistently with its provision, in several classes of cases." For, as the Court explained in *Wells Fargo & Co.* v. *Taylor*, 254 U. S. 175, 183 (1920), the provision was:

> * * * intended to give effect to a familiar rule of comity and like that rule is limited

> in its field of operation. Within that field it tends to prevent unseemly interference with the orderly disposal of litigation in the state courts and is salutary; but to carry it beyond that field would materially hamper the federal courts in the discharge of duties otherwise plainly cast upon them by the Constitution and the laws of Congress, which of course is not contemplated. As with many other statutory provisions, this one is designed to be in accord with, and not antagonistic to, our dual system of courts. * * *

And see *Hale* v. *Bimco Trading Co.*, 306 U. S. 375, 378:

> That provision is an historical mechanism * * * for achieving harmony in one phase of our complicated federalism by avoiding needless friction between two systems of courts having potential jurisdiction over the same subject-matter. * * *[22]

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[22] Note also the following conclusion of Taylor and Willis, *The Power of Federal Courts to Enjoin Proceedings in State Courts*, 42 Yale L. J. 1169, 1196 (1933):

> The very nature of the problem is such that to lay down a rigid rule governing the right of a federal court to decline to exercise jurisdiction in deference to a state court is neither practicable nor desirable. Necessarily, much must be left to depend upon whether or not the facts of a particular case present a situation in which to take jurisdiction would be to interrupt the harmonious concurrent activity of federal and state tribunals which the principles of comity are designed to promote, or would be to run counter to the policy of non-interference which the successful maintenance of a dual system of courts requires. [Footnotes omitted.]

one ground for its decision (321 U. S. at 510–511):

> As we recently held in *Lockerty* v. *Phillips*, 319 U. S. 182, 186, 187, Congress confined jurisdiction to grant equitable relief [against a maximum rent order] to [the Emergency Court of Appeals] and withheld such jurisdiction from every other federal and state court. Congress thus preempted jurisdiction in favor of the Emergency Court to the exclusion of state courts. The rule expressed in § 265 which is designed to avoid collisions between state and federal authorities (*Toucey* v. *New York Life Ins. Co.* [314 U. S. 118]) thus does not come into play. [Footnote omitted.] [23]

Similarly, the Court of Appeals for the Fourth Circuit applied the same principle in concluding that Section 265 did not preclude the Price Administrator from obtaining a federal injunction against a state court eviction order which conflicted with the paramount federal regulations on that subject (*Brown* v. *Wright*, 137 F. 2d 484).

[23] The Court further predicated its holding on the fact that, since the action of the state court also constituted a violation of the federal rent regulations and Section 205 (a) of the Emergency Price Control Act empowered the Price Administrator to seek injunctive relief against such violations in either federal or state courts, this Section constituted an implied legislative amendment to Section 265. This ground, however, was alternative to, and independent of, the exclusive jurisdiction ground discussed above. See *Porter* v. *Dicken*, 328 U. S. 252, 255; *Fleming* v. *Rhodes*, 331 U. S. 100, 107–108.

Speaking through Chief Judge Parker, the court stated (137 F. 2d at 488):

> With respect to section 265 of the Judicial Code, we do not think that section may properly be construed as forbidding the granting of an injunction to restrain interference by state courts with the enforcement of a federal statute by an agency to which Congress has delegated exclusive power to enforce it. The purpose of that section was to avoid unseemly conflict between the state and federal courts in ordinary litigation between private litigants, not to hamstring the federal government in the use of its own courts in the protection of its rights or the enforcement of its laws. The statute is held to have no application to injunctions issued in in rem actions to protect a res in the possession of the federal courts, although containing no express exception to that effect. *Toucey* v. *New York Life Ins. Co.,* 314 U. S. 118, 135 * * *. On like principle, it should have no application to injunctions issued to protect property of the federal government or the exercise of power which Congress has delegated exclusively to a federal agency. See *United States* v. *McIntosh,* D. C., 57 F. 2d 573. It is a matter of necessity, as well as of constitutional declaration, that the Constitution of the United States and laws passed pursuant thereto be the supreme law of the land; and it was never the intention of Congress, we think, that the

> power of the federal government to enforce its laws in its own courts should be limited with respect to the use of injunctions. * * * * * * If the Administrator were denied injunctive relief from threatened violation because of the pendency of state court proceedings and were required to intervene in such proceedings for relief, resulting delays might well render the act nugatory in states not in sympathy with the legislation. The federal government is not so impotent that it must depend upon instrumentalities of the states for the enforcement of legislation so vital; and it is not to be presumed that a general statute limiting the power of federal courts to issue injunctions was intended to apply to such cases.

These considerations also formed the basis for the Ninth Circuit's holding that Section 265 did not preclude a federal court from vindicating the exclusive jurisdiction created under the Agricultural Marketing Agreement Act (*Western Fruit Growers* v. *United States,* 124 F. 2d 381). In that case the Secretary of Agriculture had promulgated an order under this statute regulating the handling of certain citrus fruits. Two groups of growers affected thereby—one which had previously been enjoined by a federal district court from violating the order and the other which had not as yet—obtained an injunction in a state court blocking the administration of the Secretary's order. The United States thereupon

brought suit in the federal district court to enjoin the growers from further prosecuting their state court proceeding. In concluding that Section 265 did not bar the issuance of a federal injunction as to the second group of growers, the Court of Appeals for the Ninth Circuit first found that, in enacting the Agricultural Marketing Agreement Act, Congress had intended to preclude the state court from entertaining suits arising thereunder; it then added (124 F. 2d at 387):

> Since the Federal Courts have this exclusive jurisdiction, there was no error in the District Court enjoining the prosecution of the attempted State action, under the principles announced in *Wells Fargo & Co.* v. *Taylor,* 254 U. S. 175, * * *[24]

In sum, Section 265 of the old Judicial Code, the predecessor of Section 2283, applied only to situations where both federal and state courts had concurrent jurisdiction. It did not bar a federal court from enjoining state court proceedings which, as here, invaded a field preempted by Congress. For, in these circumstances, the state court is without jurisdiction, and accordingly a stay of its action, rather than resulting

[24] As to the first group of growers, who had previously been subject to a federal court injunction, the Ninth Circuit rested the inapplicability of Section 265 on a different principle, i. e., an implied exception to Section 265 which permits the court first acquiring jurisdiction over a subject matter to prevent proceedings in another court which would defeat that jurisdiction. 124 F. 2d at 386.

in the evil which Section 265 was designed to avoid (i. e., needless interference with matters over which the state has a concern coequal with the federal government), is necessary to prevent state intrusion into an area closed to it. Hence, the injunction obtained by the Board herein would have fallen outside the scope of Section 265 (cf. *National Labor Relations Board* v. *Sunshine Mining Co.*, 125 F. 2d 757 (C. A. 9); *National Labor Relations Board* v. *Underwood Mach. Co.*, 198 F. 2d 93, 95 (C. A. 1)).

2. *The revised language of Section 2283 made no such change as would bring the injunction obtained by the Board within that provision*

Section 265 was replaced in 1948 by Section 2283, which incorporates three specific exceptions to the otherwise broad ban against a federal court stay of state court proceedings. The Reviser's Notes explain these changes in the provisions as follows (H. Rept. No. 308, 80th Cong., 1st Sess., A–181–A–182):

* * * * *

> An exception as to Acts of Congress relating to bankruptcy was omitted and the general exception substituted to cover all exceptions.
>
> The phrase "in aid of its jurisdiction" was added to conform to section 1651 of this title and to make clear the recognized power of the Federal courts to stay proceedings in State cases removed to the district courts.

The exceptions specifically include the words "to protect or effectuate its judgments," for lack of which the Supreme Court held that the Federal courts are without power to enjoin relitigation of cases and controversies fully adjudicated by such courts. (See *Toucey* v. *New York Life Insurance Co.*, 62 S. Ct. 139, 314 U. S. 118, 86 L. Ed. 100. A vigorous dissenting opinion (62 S. Ct. 148) notes that at the time of the 1911 revision of the Judicial Code, the power of the courts, of the United States to protect their judgments was unquestioned and that the revisers of that code noted no change and Congress intended no change.)

Therefore the revised section restores the basic law as generally understood and interpreted prior to the *Toucy* [sic] decision.

Changes were made in phraseology.

* * * * *

Professor Moore, a special consultant to the Advisory Committee which worked on the 1948 revision of the Judicial Code, sheds further light on the effect of the changes in Section 2283. Thus, referring to the three specific exceptions set forth in the section, he has stated (Moore's *Commentary on the U. S. Judicial Code* (1949), pp. 396–397):

> The first exception, while stated in broader terms than its predecessor which limited itself to a reference to the Bankruptcy Act, does not, however, represent any

> change in the law, for because of the antiquity of former § 379 it was agreed that any statutory authorization to enjoin state court proceedings that was subsequently enacted operated as an implied legislative amendment to it. The third exception is an express overruling of the holding of the *Toucey* case * * *, and the second exception represents a partial repudiation of the rigid philosophy underlying that case. [Footnote omitted.]

In short, the changes in Section 2283 from the former Section 265 were intended to broaden the power of the federal courts to restrain state proceedings, and only serve to make it more clear that the injunction obtained by the Board here is outside the reach of Section 2283.

3. *In any event, the instant injunction is saved from the ban of Section 2283 by falling within one or more of the exceptions enumerated in that section*

Even if, contrary to what has already been shown, the general language of Section 2283 were a bar here, we submit that the instant case falls under one or more of the three exceptions specifically enumerated therein.

First, we have established (pp. 8–9, *supra*) that the instant state court injunction restrains, in part at least, the identical conduct which the district court was asked to enjoin in the companion Section 10 (l) proceeding brought by the

Board's General Counsel against the Union, and that, unless the state court restraint on the same conduct were lifted, any decree entered by the district court would be academic and ineffectual. Accordingly, the injunction here was necessary to aid the jurisdiction of the district court in that proceeding, and it thus falls within the second and third express exceptions set forth in Section 2283, authorizing a federal court to stay proceedings in a state court "where necessary in aid of its jurisdiction, or to protect or effectuate its judgments."[25]

Second, we believe that the injunction herein also properly falls under the first exception contained in Section 2283, which permits the grant of an injunction to stay state court proceedings where such action is "expressly authorized by Act of Congress." As the Reviser's Notes make clear (*Supra,* p. 54), this phrase was substituted for the exception in Section 265 relating to bankruptcy cases, and was intended to cover all instances, including bankruptcy, where the ban contained in Section 2283 had been superseded by express federal legislation. The statutory provisions which this Court had occasion to consider in *Toucey* as legislative "withdrawals from this

[25] This is highlighted by the fact that the jurisdiction of the district court here was predicated, in part, on the all writs provision of Section 1651 of the Judicial Code (pp. 31–32, *supra*).The Reviser's Notes point out (p. 54, *supra*) that the purpose of the second exception in Section 2283 was "to conform to section 1651 of this title."

sweeping prohibition [in Section 265]" (314 U. S. at 132) go far in revealing the manner in which Congress has acted to limit its scope. Significantly, an express specification of injunctive authority to stay state court proceedings has not been deemed prerequisite to finding that Congress has intended that Section 2283 shall not be applicable. See *Porter* v. *Dicken,* 328 U. S. 252, 255; *Bowles* v. *Willingham,* 321 U. S. 503, 510. For example, the Act of 1851 limiting shipowner's liability "operates as an implied legislative amendment" (*Toucey,* 314 U. S. at 133) to Section 265 because it provides that when a trustee has taken a vessel for the benefit of creditors, "all claims and proceedings against the owner or owners shall cease." 9 Stat. 635, 636. Similarly, the Court in *Toucey* viewed the Frazier-Lemke Act (47 Stat. 1473) as a legislative inroad on Section 265 because it established an exclusive federal jurisdiction to carry out its provisions, and prohibited prosecution of specified proceedings elsewhere (314 U. S. at 134). In the same manner, Section 265 was held not to apply to cases removed to federal courts, for the removal procedure contained a prohibition against state courts taking further action in cases after their removal (28 U. S. C. 1446 (e)). (314 U. S. at 133.)

It is clear, therefore, that legislative exceptions to Section 265 could be found by implication; an express reference to the inapplicability of that

Section or an express grant of injunctive power to the federal courts was not required. It was enough that there be a grant of exclusive federal authority to deal with specified subject matter. And where it is not shown that Congress intended to stay the hand of federal courts to restrain state court proceedings, the legislation may properly be said to come within the first exception to Section 2283. Compare *Cooper* v. *Hutchinson,* 184 F. 2d 119 (C. A. 3), with *Aultman & Taylor Co.* v. *Brumfield,* 102 Fed. 7 (C. C. N. D. Ohio).

Under the criteria thus established for determination of whether a federal statute may be said to modify, *pro tanto,* Section 2283, we think it clear that the National Labor Relations Act falls into the same category as the Emergency Price Control Act, the Frazier-Lemke Act, the Act of 1851 limiting shipowners' liability, and the removal statutes. For in the Labor Act Congress has established an exclusive federal jurisdiction for the regulation of the subject matter it covers, and by the same token has foreclosed the assertion of state jurisdiction in this field. Just as, for example, state court action contravenes the Congressional scheme in proceedings covered by the Frazier-Lemke Act (*Kalb* v. *Feuerstein,* 308 U. S. 433) and for that reason is enjoinable and not subject to Section 265 (*Toucey,* 314 U. S. at 134), so too may a federal injunction be granted against state court proceedings which are in conflict with

the Labor Act's exclusive procedures. See *National Labor Relations Board* v. *Sunshine Mining Co.*, 125 F. 2d 757, 762 (C. A. 9); *National Labor Relations Board* v. *Underwood Machine Co.*, 198 F. 2d 93, 95 (C. A. 1).[26]

[26] A separate reason for the non-applicability of Section 265, and, for the same reason, of Section 2283, to this case has been advanced by lower courts which have held that Section 265 does not apply to suits initiated by the United States to enforce federal statutes. (See, e. g., *Brown* v. *Wright*, 137 F. 2d 484, 488 (C. A. 4); *United States* v. *Inaba*, 291 Fed. 416 (E. D. Wash.); *United States* v. *McIntosh*, 57 F. 2d 573 (E. D. Va.), appeal dismissed, 70 F. 2d 507 (C. A. 4); *United States* v. *Babcock*, 6 F. 2d 160 (D. Ind.), modified on other grounds, 9 F. 2d 905 (C. A. 7); *United States* v. *Taylor's Oak Ridge Corp.*, 89 F. Supp. 28, 32 (E. D. Tenn.); *United States* v. *Cain*, 72 F. Supp. 897 (W. D. Mich.); *United States* v. *Phillips*, 33 F. Supp. 261 (N. D. Okla.), vacated on other grounds, 312 U. S. 246.) The prohibition in Section 2283, like that in Section 265, does not explicitly bar the United States from obtaining an injunction against prosecution of state court proceedings. But cf. *United States* v. *Parkhurst-Davis Co.*, 176 U. S. 317. As this Court has said in ruling that the procedurally analogous statute which forbids a federal court to issue injunctions in labor disputes (Norris-La Guardia Act) did not prevent the United States from securing such an injunction, "statutes which in general terms divest pre-existing rights or privileges will not be applied to the sovereign without express words to that effect" (*United States* v. *United Mine Workers*, 330 U. S. 258, 272). The Court added that while this rule is only one of construction, it has been held not controlling only where "there were extraneous and affirmative reasons for believing that the sovereign should also be deemed subject to a restrictive statute" (330 U. S. at 272–273). Here we believe that all of the material considerations furnish reasons for not subjecting the sovereign to this "restrictive statute." For, as we have

CONCLUSION

For the reasons stated it is respectfully submitted that the judgment of the Court of Appeals should be affirmed.

SIMON E. SOBELOFF,
Solicitor General.
PHILIP ELMAN,
Special Assistant to the Attorney General.
GEORGE J. BOTT,
General Counsel,
DAVID P. FINDLING,
Associate General Counsel,
DOMINICK L. MANOLI,
Assistant General Counsel,
NORTON J. COME,
DUANE B. BEESON,
Attorneys,
National Labor Relations Board.

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shown, the effectiveness of governmental policy in the field where this case falls depends solely upon the availability to the government of its own courts for the vindication of that policy (Cf., *United States* v. *Inaba*, *supra*, at p. 418–419; *United States* v. *Babcock*, *supra*, at p. 161. Compare *In re Debs*, 158 U. S. 564, 584).

There can be no question, of course, that the Board, as an agency of the United States created to administer the policy of the United States in the field covered by the Act, must be considered in the same light as the sovereign for the purpose of construing the applicability of Section 2283 to the sovereign (Cf., *Nathanson* v. *National Labor Relations Board*, 344 U. S. 25, 27–28; *United States* v. *Remund*, 330 U. S. 539, 541–542; *United States* v. *Emory*, 314 U. S. 423).

ployees in the exercise of the rights guaranteed in section 7: * * *

* * * * *

(4) to engage in, or to induce or encourage the employees of any employer to engage in, a strike or a concerted refusal in the course of their employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, where an object thereof is: (A) forcing or requiring any employer or self-employed person to join any labor or employer organization or any employer or other person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person; * * *

* * * * *

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: *Provided,* That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting

commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act or has received a construction inconsistent therewith.

* * * * *

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the United States Court of Appeals for the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the District Court of the United States for the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceedings, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The jurisdiction of the court shall be exclusive and its judgment

and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered, and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the

Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

* * * * *

(j) The Board shall have power, upon issuance of a complaint as provided in subsection (b) charging that any person has engaged in or is engaging in an unfair labor practice, to petition any district court of the United States (including the District Court of the United States for the District of Columbia), within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

* * * * *

(l) Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4) (A), (B), or (C) of section 8 (b), the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any district court of the United States (including

the District Court of the United States for the District of Columbia) within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, nothwithstanding any other provision of law: * * * In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8 (b) (4) (D).

Title 28, U. S. Code

SEC. 1337. COMMERCE AND ANTITRUST REGULATIONS.

The district courts shall have original jurisdiction of any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

SEC. 1651. WRITS.

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

SEC. 2283. STAY OF STATE COURT PROCEEDINGS.

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where neces-

sary in aid of its jurisdiction, or to protect or effectuate its judgments.

Section 265 of the Judicial Code of 1911, 36 Stat. 1162, 28 U. S. C. 379 (1940 ed.), provided:

> The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a State, except in cases where such injunction may be authorized by any law relating to proceedings in bankruptcy.

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